

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9495 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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GM BENIFICIARY TRUST

Versus

INCOME TAX OFFICER

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Appearance:

MR KA PUJ for Petitioner  
MR MANISH R BHATT for Respondent No. 1  
SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 17/01/97

ORAL JUDGEMENT

(Per R.K.Abichandani, J)

1. Rule. The learned counsel appearing for the respondents waives service of rule for the respondents and the matter is taken up for final disposal at the

instance of both the sides.

2. The petitioner seeks to challenge the order dated 29.3.1995 at Annexure H to the petition passed by the CIT Gujarat-I rejecting the waiver petition of the assessee made for the year 1983-84.

3. The petitioner had made the waiver petition under Section 273-A of the said Act on 10.7.1991 seeking waiver of interest under Section 139(8), 215/217 and penalties under Section 271(1)(a) and 273 of the said Act for the assessment years 1983-84 and 1987-88. As regards the assessment year 1987-88 the CIT reduced 50% of the interest charged under Section 139(8) and under Section 215/217 of the Act. However, as regards the assessment year 1983-84, the CIT observed that no satisfactory explanation for commitment of defaults was offered by the assessee who has appealed against the orders made against it. It was observed that for the said assessment year 1983-84, the assessee had not made full and true disclosure of its income and hence the assessing officer has also levied penalty under Section 271(1)(c) of the Act against which order the assessee had preferred an appeal before the CIT (Appeals) which was pending. On this basis it was held that it cannot be said that the assessee had fulfilled the conditions for waiver of interest and penalties levied for the assessment year 1983-84.

4. It would appear from the impugned order that the CIT has not independently considered the matter and has merely by reference to what was held by the assessing officer while levying penalty under Section 271(1)(c) come to the conclusion that the assessee had not fulfilled the conditions for waiver of interest and penalties. Under Section 273-A(1)(c) the Commissioner may in his discretion reduce or waive the amount of penalty or interest if he is satisfied that the assessee had prior to the issue of notice to him voluntarily and under good faith made full and true disclosure of his income and has paid the tax on the income so disclosed. It is therefore clear that the CIT was required to consider the facts on record for reaching to the requisite satisfaction as to whether the penalty or interest imposed should be reduced or waived and pass a reasoned order. It is clear from the impugned order that the CIT has not taken his own decision in the matter nor has he given any reasons for the conclusion reached by him. The impugned order to the extent that it rejects the waiver application of petitioner for the assessment year 1983-84 cannot therefore be sustained and is set

aside leaving it open to the CIT to consider the matter afresh and make an appropriate order in accordance with law. Rule is made absolute accordingly with no order as to costs.